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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning Unauthorized)
Changes of Consumers' Long Distance Carriers)

CC Docket No. 94-129

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS
of
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Summary

In these comments, Sprint addresses *seriatim* the issues raised in the FNPRM:

Recovery of Additional Amounts from Unauthorized Carriers - Assuming that the Commission's liability rules are upheld, Sprint does not oppose the Commission's proposals here to require that the unauthorized carrier pay the authorized carrier double the amount of charges paid by the subscriber during the first 30 days after the slam. This ensures parity – in all cases, the slammed end user gets 30 days of free service, and the authorized carrier gets at least the revenues it would have earned absent the slam.

Resellers and CICs – Sprint recommends that resellers be required to obtain their own CIC. This protects against soft slams, allows for the immediate and correct identification of the carrier to which the line is presubscribed, and is considerably less expensive to implement than the Commission's other two options.

Independent Third Party Verification – Sprint supports use of three-way conference calls between the consumer, the telemarketing representative, and the independent third party verifier (both live and automated). Sprint also sets forth the information the third party verifier should obtain from the consumer to authenticate a sale.

Carrier Changes Using the Internet – Internet sales should be verified using the same 3 options as apply to other telemarketing sales order. However, third party verification should be modified, either by having the carrier implement a “call me” button on its website which the consumer could click on after he has submitted his request for service; or, the carrier could use an independent third party web company to confirm an order before the order is submitted to the carrier for implementation.

Definition of “Subscriber” – The Commission should not adopt the proposal to allow the named party on a bill to designate other parties authorized to choose a new service provider, as this proposal requires that a centralized database which lists the authorized parties be developed, maintained, and accessed. Instead, “subscriber” should be defined as an adult member of the household who states that he or she has authority to select the household’s carrier.

Submission of Reports by Carriers - Any slamming reports should be submitted by the third party dispute administrator, not by carriers, to ensure neutral, accurate, and consistent reporting.

Registration Requirement - Sprint does not oppose this requirement, providing that the registration information is readily available on the Internet, that the facilities-based carrier is not responsible for the accuracy of registration information provided by a reseller, and that registration is required of all carriers.

Third Party Administrator for Preferred Carrier Changes and Preferred Carrier Freezes – Sprint supports the concept of a third party administrator for these functions, and is participating in industry efforts to “field test” such a system.

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COMMENTS

Sprint Corporation hereby respectfully submits its comments in the above-captioned proceeding in response to the Further Notice of Proposed Rulemaking (FNPRM) released December 23, 1998. Sprint addresses *seriatim* the issues raised in the FNPRM.

I. Recovery of Additional Amounts from Unauthorized Carriers

In the FNPRM, the Commission proposes that where a subscriber has paid charges to the unauthorized carrier, the authorized carrier collect from the unauthorized carrier double the amount of charges paid by the subscriber during the first 30 days after the unauthorized change, with half being refunded to the subscriber, and half retained by the authorized carrier (para. 141). Where the subscriber has not paid charges to the unauthorized carrier, the Commission proposes that the authorized carrier collect from the unauthorized carrier, and retain, the amount that would have been billed to the subscriber during the first 30 days after the unauthorized change (para. 142).

Sprint makes clear in its Petition for Reconsideration that it has serious reservations about the efficacy and legality of the Commission's decision to award a windfall to a customer in a

situation where such windfall is based upon the customer's naked allegation that he or she has been slammed; where there has been no determination that a slam has actually occurred; where there is no consideration as to whether the purported slam is inadvertent or willful; where there is no consideration as to how any actual "pain and suffering" on the part of the customer is related to his or her bill for the first thirty days; where there is no real possibility of redress if the alleged slam is groundless; and, where the thirty-day free service is, consequently, best understood as the imposition of a form of "punitive damages" upon the accused carrier without any actual determination of guilt. As Sprint also explains in its Petition, the fact that the accused carrier might receive restitution if it were later found innocent is not, under the circumstances, worth very much. The decision of whether a slam had occurred would be made by the customer's "authorized carrier." The authorized carrier has absolutely no incentive to insist that its customer pay back money to the purported slammer -- a competing carrier. Such insistence may well result in a loss of the customer by the authorized carrier, and even if such a loss did not occur, all that the authorized carrier would accomplish would be to place money in the hands of its competitor. Clearly, for a carrier accused of a slam to be placed in a position of relying upon its competitor's uneconomic behavior for redress is to provide a remedy which, as a practical matter, is worthless, or nearly so.

However, assuming that the Commission's liability rules are upheld on appeal and/or on reconsideration, Sprint does not object to the Commission's further proposals here, so long as the investigation into the slamming complaint is done by a neutral third party dispute administrator. Under the slamming rules already adopted by the Commission, consumers have an incentive to withhold payment from the alleged unauthorized carrier, since this enables the customer to obtain 30 days' free service if a slam is found to have occurred (the authorized carrier, however,

receives no compensation). In contrast, where the customer does pay the alleged unauthorized carrier, the customer at best gets back the difference in rates charged by the authorized and unauthorized carriers (and the authorized carrier gets the revenues it would have received had the slam not occurred). The Commission's proposals here ensure parity -- in all cases, the slammed end user gets 30 days of free service, and the authorized carrier gets at least the revenues it would have earned had the slam not occurred, and perhaps some of the administrative costs it incurs to re-establish the end user as a presubscribed customer as well. Ensuring that an authorized carrier is no worse off than it would have been had the slam not occurred, irrespective of whether a customer paid the unauthorized carrier or not, seems entirely consistent with the intent implicit in Section 258(a) of the Act.

Sprint believes that computation of funds to be transferred between the unauthorized and the authorized carriers should be handled by the neutral third party administrator which Sprint and other carriers are currently seeking to hire to handle slamming disputes. Under the new slamming liability rules, there is the potential for each carrier to owe or be owed monies from literally hundreds of other carriers. Keeping track of the money to be transferred for each of the thousands of slamming disputes which will arise, for each combination of authorized/unauthorized carriers, is an administrative burden best handled on a centralized basis. Having this clearinghouse function handled by the third party administrator will streamline the process and should minimize any disputes between carriers as to net payments due. Therefore, the Commission's proposal here, if adopted, should become effective only after the neutral third party administrative system is operational.

II. Resellers and CICs

The Commission notes that in cases in which resellers use the same CIC as the underlying facilities-based carrier, two slamming-related problems arise: the “soft slam” (the unauthorized conversion to a carrier which uses the same CIC as the user’s authorized carrier), and the misidentification of a reseller as the underlying carrier (para. 145). To address these problems, the Commission asks whether resellers should be required to obtain their own CIC; whether each reseller should be assigned a pseudo-CIC (which involves creating a coded suffix that follows the underlying facilities-based carrier’s CIC); or whether the underlying facilities-based carrier should be required to modify its systems to prevent unauthorized changes from occurring if a subscriber has a freeze on the account and to allow identification of resellers on a consumer’s bill.

Sprint recommends that resellers be required to obtain their own CICs. This would help avoid soft slams (particularly in cases in which there is a PIC freeze in place) and would enable both the consumer and his local telephone company to correctly and immediately¹ identify the carrier to which the line is presubscribed. Furthermore, because of the recent expansion from 3-digit to 4-digit CICs, there are more than enough CICs available to allow the assignment of an

¹ Many slammed customers have complained about the series of calls which they have placed in order to reach the carrier which actually requested the unauthorized conversion. For example, a slammed customer may first call his local exchange carrier, which refers the customer to the carrier whose CIC is included on the account. The CIC holder will in turn refer the customer to the actual service provider. Additional calls may be necessary if a reseller of a reseller, or a reseller’s billing agent, is involved. This process is time-consuming and frustrating to consumers, and harmful to the CIC holder, whom the consumer may continue to blame because of its business relationship with the reseller.

individual CIC to each reseller. Today, there are approximately 1200 unassigned Feature Group D CICs,² and approximately 339 toll resellers.³

Requiring resellers to obtain their own CIC also protects the underlying facilities-based carrier from potential liability associated with acting as the executing carrier for PIC changes in which the subscriber remains on the facilities-based carrier's network (see *Order*, para. 95). As the Commission noted (*id.*, para. 94), the executing carrier is responsible for any "unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes...." If each reseller had its own CIC, any PIC change requests could be submitted directly to the LEC (or to the third party administrator, if allowed) by the reseller.

Some resellers will undoubtedly object to a requirement that they be required to obtain their own CIC because of the costs associated with loading that information into the LECs' switches (to ensure proper routing of the call). The current estimated total charge for activating a CIC nationwide ranges from \$600,000 to \$1 million; in addition, LECs do charge a PIC change charge for each ANI switched to a new CIC. To address concerns that these costs may be a burden on existing resellers, Sprint suggests that the Commission consider undertaking an investigation into the LECs' costs of activating a CIC and switching an ANI to ensure that any charges are reasonable and cost-based. The Commission could also require that LECs implement less stringent payment plans (*e.g.*, allowing resellers to pay CIC activation fees over a

² Based on NANPA data for March 1999.

³ According to the "Telecommunications Industry Revenue: TRS Fund Worksheet Data" report released November 1997 by the Common Carrier Bureau's Industry Analysis Division (Figure 2), 143 IXC's and 339 toll resellers paid into the TRS fund. Many of these carriers already have at least one FG D CIC already, and certain carriers hold far in excess of the recommended maximum number of CICs, acquired primarily through the merger with or acquisition of other IXC's. In the event of an impending CIC exhaust, the Commission could require that the NANPA reclaim excess CICs from those carriers.

several month period rather than as a single non-recurring charge, and assessing lower PIC change charges for high volume, bulk conversions) in order to ease the burden on existing resellers.⁴

Both of the other reseller options contained in the FNPRM are more costly and complicated than the first reseller option, and should therefore not be adopted. For example, in contrast to requiring each reseller to obtain its own CIC, an option which can be readily implemented using systems already in place, the pseudo-CIC option would require LECs and IXCs to modify their switches to recognize the additional digits. Because this involves modifying the format of an existing field (as opposed to populating an existing field), the cost of such modifications are likely to be significant and certainly greater than the cost of activating a new CIC for each reseller. Because the costs of implementing these changes would presumably be recovered from the resellers (since they are the cost-causers), there is no financial benefit to resellers from implementing option 2.

Similarly, option 3 (requiring the underlying facilities-based carrier to modify its systems to prevent soft slams) would presumably require costly work-arounds to identify resellers. The FNPRM does not offer specific proposals on how option 3 is to be implemented, which makes it difficult to determine what type of changes would be required to implement this option, much less estimate the cost of such changes. Indeed, it is not clear that a facilities-based carrier could even modify its systems to enable it to correctly identify the actual service provider in situations

⁴Correctly identifying the service provider and correctly switching a consumer to the network of his preferred service provider are necessary to protect consumers, and as shown above, assigning a CIC to each service provider is the best way to ensure that these functions are performed properly. CIC activation and PIC conversion costs therefore must be accepted as a legitimate cost of doing business, and new resellers should factor these costs into their business plans when analyzing whether or not to provide telecommunications services.

involving multiple levels of resellers. Because the facilities-based carrier has little or no visibility into the operations of its wholesale customers (for example, the facilities-based carrier generally has no business relationship with the reseller of a reseller), it may not even be aware that its reseller customer is not the end user's service provider. Moreover, option 3 does nothing to enable the LEC to immediately and correctly identify the actual toll service provider (as opposed to the CIC holder).

III. Independent Third Party Verification

The Commission has sought comment on several proposals intended to protect against abuse of independent third party verification: whether the telemarketing carrier should be allowed to remain on the line during the third party verification (para. 146); whether to allow use of automated third party verification systems (para. 167); and whether the independent third party verifier should be required or permitted to provide certain information in addition to confirming the subscriber's carrier change request (para. 168).

The telemarketing carrier should be allowed to transfer the caller to the independent third party verifier, and to remain on the line to answer any questions the prospective customer may have.⁵ Sprint agrees with the Commission that "a three-way call is often the most efficient means by which to accomplish third party verification" (para. 166) – for example, this method minimizes the risk that the customer is not available when the third party verifier calls the customer back, and ensures that the verification occurs when the transaction is still fresh in the mind of the prospective customer (thereby reducing any confusion as to the purpose of the third

⁵ If the customer does have a question for the telemarketing agent, the verification representative will leave the order pending resolution and drop off of the call. Once the telemarketing agent has resolved the subscriber's issue, the telemarketing agent can re-initiate the verification process by transferring the customer back to the independent third party verifier.

party verification). Sprint further recommends that the sales representative introduce the customer, and then either drop off the call, or remain completely silent during the call. The introduction by the sales representative helps to ensure that the representative is not acting the part of the subscriber and confirming his own orders. By dropping off the call, or remaining silent, the sales representative in no way compromises the independent nature of the third party verification.

Sprint also supports allowing the use of automated third party verification systems. Verification using an automated system (including subsequent review of the taped verification by a live operator to ensure that the subscriber and the telemarketing agent are different people, and to verify that the subscriber's responses to the questions posed are logical) can be done at approximately one-third the cost of using a live operator. With live agent review, the tape-recorded record of the subscriber's authorization provides great consumer protection against slamming.

Sprint does not believe that it is necessary for the Commission to specify a standardized script to be used by all third party verifiers. However, the Commission could require that the independent third party verifier state that the purpose of the call is to confirm a decision to switch telecommunications service to [named carrier], and that there may be a charge for switching service providers. In addition, the verifier should obtain the following information:

- Acknowledgment that the person speaking is 18 years or older, and is authorized to make the change;
- The subscriber's name and address;
- Separate confirmation of the telephone number(s) to be switched for interLATA toll, intraLATA toll, local, and international, as applicable; and
- Some customer-specific information to verify the order, such as the date of birth, social security number, or mother's maiden name.

Sprint does not believe that the third party verifier should provide information on the rates or service offerings of the carrier, as that potentially puts the verifier in the position of serving as the carrier's agent, and compromises the verifier's independence.

IV. Carrier Changes Using the Internet

As the Commission notes (para. 169), more and more carriers are using the Internet as a marketing tool to obtain new subscribers. The Commission questions whether a carrier change submitted over the Internet is a valid LOA since there is no hand-signed document.

Sprint believes that the Commission's concern about Internet-based slamming is exaggerated. Millions of customers use the Internet to purchase and sell goods and services, transact stock purchases and sales, and to pay bills or perform other on-line banking functions. Internet transactions can be made at any hour, without leaving home, and (generally) without the hassle of being placed on hold or forced to wait in line. The convenience and ease of use associated with carrier changes using the Internet would be significantly compromised if the consumer is required to sign by hand and return in the mail a paper LOA received perhaps several days after he initially requested long distance service on-line.

Sprint is unaware of any information which indicates there is any problem with Internet-based slamming, and we would note that Internet sales do not involve any sales commissions, which helps reduce the incentive to switch a consumer without authorization. Therefore, Sprint recommends that the same three verification methods allowed for telephone sales be used for Internet sales as well. The third party verification option could be modified in one of two ways. First, a carrier could add a "call me" button to its website which the consumer could click on after he has submitted his request for service. The "call me" button could include a comment field which includes the telephone number and time the independent third party verifier should

call. Secondly, the third party verification process could be modified for Internet subscribers to remove the requirement for an oral confirmation. Carriers could contract the services of an independent third party web company. Subscribers' orders for service could first be submitted to the third party web company for confirmation of the decision to switch providers. The independent third party would only submit confirmed orders back to the carrier for further processing. The information obtained through electronic third party verification would be the same as that obtained through oral third party verification.

V. Definition of "Subscriber"

The Commission seeks comment on how a subscriber should be defined (para. 176), and suggests allowing the named party on the bill to designate additional persons in the household to make telecommunications decisions.

Sprint agrees that certain parties other than the named party on the bill should be allowed to choose the household's long distance carrier. However, the Commission's proposal is unwieldy and should not be adopted: it would require that a centralized database which lists the authorized parties be developed, maintained, and accessed. While Sprint has received a few complaints regarding the conversion of a household's long distance service by another member of the household (*e.g.*, child or roommate) without authority to make such a decision, such complaints are so small in both absolute numbers and as a percentage of total slamming complaints that the database solution would constitute overkill. Sprint recommends that "subscriber" should be defined as an adult member of the household who states that he or she has

authority to select the household's carrier.⁶ The carrier should be allowed to accept on faith the consumer's representation that he or she has authority to make such a decision.

VI. Submission of Reports by Carriers

Sprint opposes the Commission's proposal to require each carrier to submit to the Commission a report on the number of complaints of unauthorized changes in telecommunications providers that are submitted to the carrier by its subscribers (para. 179). Such information – especially when provided by local exchange carriers – will inflate the number of slams attributed to other carriers because what is reported is the number of slamming complaints, without reference to whether a slam actually occurred⁷ or to the cause of the alleged slam.⁸

To the extent that the Commission wants to obtain slamming information, it should obtain such information from the third party dispute administrator. Sprint expects that there will be widespread industry participation in the third party administration system (particularly among IXC's),⁹ so that the slamming data collected by the third party administrator is likely to be fairly comprehensive. Furthermore, data collected by the third party administrator would be neutrally and consistently reported.

⁶ It is Sprint's understanding that some states have adopted different definitions of "subscriber." Adoption of the definition recommended by Sprint ensures consistency nationwide.

⁷ A consumer may allege that he has been slammed even when no unauthorized conversion has occurred: for example, the consumer may have submitted a signed LOA without realizing that such document allows the carrier to switch the consumer's long distance service, or the consumer may (mistakenly) assume that charges associated with dial-around traffic or operator-assisted collect calls were the result of an unauthorized conversion.

⁸ Some consumers may be switched to the network of a long distance carrier through no fault of that carrier, for example, as a result of an error on the part of the LEC.

⁹ Based on preliminary discussions, we expect that at a minimum, Sprint, AT&T, MCI-Worldcom, Comptel, TRA and ALTS will use the services of the third party dispute administrator.

VII. Registration Requirement

The Commission asks whether it should impose a registration requirement on carriers who wish to provide interstate telecommunications service (para. 180). A carrier would have an affirmative duty to ascertain whether another carrier has filed a registration with the Commission prior to offering service to that carrier (para. 182).

Sprint supports such a requirement so long as three conditions are met:

- The Commission should post all registrations on the Internet so that a facilities-based carrier can easily check the registration status of a potential reseller customer;
- The facilities-based carrier is not held responsible for the accuracy of the registration information provided by a reseller; and
- Registration is required of all carriers, including LECs.

VIII. Third Party Administrator for Preferred Carrier Changes and Preferred Carrier Freezes

The Commission asks whether the industry should implement a comprehensive system in which an independent third party would administer carrier changes, verification, and preferred carrier changes, as well as the dispute resolution functions (para. 183).

In its Comments on the Further Notice issued herein, Sprint argued that the competitive goals of the 1996 Telecommunications Act would not be achieved as long as the ILECs remained gatekeepers of the PIC change process. Thus, Sprint recommended (Comments at 19-20) that the Commission assign responsibility for the process to a neutral third party administrator. Other commenting parties and the Commission agreed that the concept of a third party administrator had merit since "such party would have an incentive to administer carrier changes in a neutral and accurate manner." *FNPRM* at para. 183. However, the Commission determined that the then-existing record was "not fully developed to support the creation of a

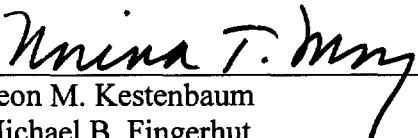
new and independent agent to handle execution functions at this time" and asked for further comments on the concept. *Id.*

Sprint, together with AT&T and MCI, have met and are continuing to meet with various vendors to determine whether this meritorious concept could, in fact, be implemented in a reasonable and efficacious manner. Sprint understands that AT&T is submitting a paper with its Comments herein which describes the views of one such vendor – Lockheed Martin Communications Industry Services-- as to how the neutral third party administrator could be structured and how it would handle the PIC administration process. Sprint therefore does not believe it necessary to also detail the findings of this paper. Nonetheless, Sprint would emphasize that the paper provides substantial evidence that a neutral third party PIC administrator is technically feasible, will be more efficient than the current PIC system, and is likely to be cost-effective.

Of course, before the Commission mandates the establishment of a third party PIC administrative system, it may wish to have a "field test" as to the system's workability. Toward this end, Sprint's local telephone division has been asked to participate in a trial and is currently in discussions with MCI, AT&T and certain vendors as to the details of the trial. Assuming that such details are worked out to its satisfaction, Sprint is willing to participate in such trial. It believes that the trial will demonstrate the feasibility of a third party PIC administrator as set forth in the paper being submitted by AT&T.

Respectfully submitted,

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March 18, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Comments** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 18th day of March, 1999 to the parties on the attached list.


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